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UBER TECHNOLOGIES, INC.

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 CY R. BROWN, on behalf of himself and
others similarly situated,

14 Plaintiff,

15 v.

16 UBER TECHNOLOGIES, INC.,

17 Defendant.
18

Case No.: 2:15-cv-00880

NOTICE OF REMOVAL

19
20 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446,
21 and 1453 Defendant Uber Technologies, Inc. (“Uber” or “Defendant”) removes this
22 action from the Superior Court of the State of California for the County of Los
23 Angeles, and in support of this removal states as follows:

24 **Procedural History and Notice Timing**

25 1. On January 6, 2015, Plaintiff Cy R. Brown filed this proposed class
26 action in the Superior Court of the State of California for Los Angeles County. *See*
27 Ex. A (Complaint). Plaintiff claims violation of California’s Unfair Competition
28 Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, breach of contract, breach of good

1 faith and fair dealing, unjust enrichment and restitution, accounting, conversion,
2 fraudulent concealment, and constructive trust.

3 2. On January 7, 2015, Uber was served with a copy of Plaintiff's
4 Complaint. *See* Ex. B (Service of Process Transmittal Form).

5 3. This notice of removal is timely filed because it is within 30 days of
6 service and within the time period provide in 28 U.S.C. § 1446(b).

7 4. Los Angeles County, where the action is currently pending, is located
8 within the United States District Court for the Central District of California.

9 5. No previous notice of removal has been filed in this case.

10 **Jurisdiction**

11 6. This Court has jurisdiction over this putative class action under the
12 Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because: (1) the
13 citizenship of at least one proposed class member is different than that of Uber; (2)
14 the amount in controversy, aggregated for all class members, exceeds \$5 million,
15 exclusive of interests and costs; and (3) the proposed class consists of at least 100
16 members.

17 7. Sufficient diversity of citizenship is present, as the citizenship of at
18 least one proposed class members is different than that of Uber. Plaintiff's
19 Complaint alleges that Mr. Brown resides in Phoenix, Arizona. *See* Complaint ¶ 7.
20 Uber is a Delaware corporation with its principle place of business in San
21 Francisco, California. *Id.* ¶ 8.

22 8. Plaintiff alleges that "the prospective class numbers in the tens of
23 thousands." Complaint ¶ 42. Therefore the proposed class is greater than 100
24 members and satisfies the minimum set forth in § 1332(d).

25 9. The amount in controversy exceeds \$5 million. Plaintiff seeks four
26 types of relief in his Complaint: a return of fees paid by users, punitive damages,
27 attorneys' fees, and injunctive relief. *See* Complaint ¶¶ 54, 79. For purposes of
28 CAFA jurisdiction, each of these types of relief is properly included in the Court's

determination of the amount in controversy. *See Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005) (“The calculation of the amount in controversy takes into account claims for ‘general’ damages, ‘special’ damages, punitive damages if recoverable as a matter of law, and attorneys’ fees recoverable by statute or contract.”); *Otay Hydraulics v. Safety-Kleen Systems, Inc.*, No. 2:12-07357-OWD, 2013 WL 1898573 (C.D. Cal. May 6, 2013) (“If a defendant's cost of complying with an injunction would exceed the jurisdictional floor, that compliance cost represents the amount in controversy for jurisdiction purposes.”). In the aggregate, this relief exceeds the \$5 million CAFA threshold.

10. Plaintiff challenges Uber’s alleged practice of charging riders a “LAX Airport Fee” of \$4 per trip to Los Angeles International Airport, and seeks the return of all such fees paid. The amount of the LAX surcharge collected to date exceeds \$1.5 million. Plaintiff also prays for punitive damages, and alleges that the class is entitled to such damages under California Civil Code §§ 3294 *et seq.* Complaint ¶ 79. Although there is no fixed formula for calculating punitive damages under Civil Code § 3294, the Supreme Court has indicated that a multiplier of up to 4-to-1 and potentially up to 9-to-1 may pass constitutional muster. *See, e.g., State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (punitive damage in excess of single digit multiplier from compensatory damages may violate due process). Plaintiff also seeks attorneys’ fees as authorized by statute in connection with claims under the Unfair Competition Law. *Id.* ¶ 54. For purposes of determining CAFA jurisdiction, courts in the Ninth Circuit assume that a request for attorney fees adds an additional 25% of any potential recovery to the amount in controversy. *Rodriguez v. Clean Source, Inc.*, No. 14-CV-0789-L(DHB), 2014 WL 3818304 (S.D. Cal. 2014) (collecting cases). Collectively, actual damages and/or restitution, potential punitive damages and potential attorney fees exceed \$5,000,000. Finally, Plaintiff seeks injunctive relief prohibiting Uber from continuing to collect any LAX airport fee. Based on current usage, this

1 request for relief puts at issue over \$1 million in charges per year for the indefinite
2 future, thereby rendering the amount in controversy still further beyond CAFA's \$5
3 million threshold.

4 **Notice and Service**

5 11. A notice of this removal together with a copy of this Notice, shall be
6 filed with the Superior Court of the State of California for the County of Los
7 Angeles, and shall be served on opposing counsel.

8
9 Dated: February 6, 2015

FENWICK & WEST LLP

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11 By: /s/ Laurence F. Pulgram

12 Laurence F. Pulgram

13 Tyler G. Newby

14 Annasara G. Purcell

15 Attorneys for Defendant
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